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Letter Ruling 81-44: Rentals of Scaffolding for Use in Public Works Project

June 4, 1981

You inquire whether rentals of scaffolding and related equipment by ***** ("Company") to customers located in New Hampshire are subject to the Massachusetts sales tax. The customers pick up the rented items at the Company's Massachusetts business premises.

Some customers rent the equipment for use in the construction of public works owned by the State of New Hampshire or the United States, but the Company does not directly rent equipment to any governmental body or agency.

Massachusetts General Laws Chapter 64H, Section 2 imposes an excise on sales at retail of tangible personal property in Massachusetts. "Sale" includes:

"[a]ny transfer of title or possession, or both, exchange, barter, lease, rental, conditional or otherwise, of tangible personal property for a consideration, in any manner or by any means whatsoever" (G.L. c. 64H, s. 1(12)(a)).

Chapter 64H, Section 6(f) exempts from tax sales of building materials and supplies to be used in the construction, reconstruction, alteration, remodeling or repair of any building, structure, public highway, bridge or other public works owned by or held in trust for the benefit of the United States, the Commonwealth of Massachusetts or any political subdivision thereof, or their respective agencies, and used exclusively for public purposes, so long as the governmental body or agency has first obtained a certificate from the Commissioner stating that it is entitled to such exemption (Form ST-2) and the vendor keeps a record for each sale describing the item or items sold and setting forth the sales price for each item, the name and address of the purchaser, the date of the sale, and the number of the certificate of exemption (see Division 8(f) of the Department of Revenue's Record Retention Regulation (830 CMR 62C.24), a copy of which is enclosed). "Building materials and supplies" is defined in Section 6(f) as including:

"rental charges for construction vehicles, equipment and machinery rented specifically for use on the site of any such tax exempt project..."

Based on the foregoing, it is ruled that:

(1) the rentals all take place in Massachusetts and are subject to Massachusetts sales tax unless an exemption applies;

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(2) rentals of scaffolding and related equipment for use in the construction, reconstruction, alteration, remodeling or repair of public works owned by or held in trust for the benefit of the State of New Hampshire or its political subdivisions or agencies are subject to tax; and

(3) rentals of scaffolding and related equipment exclusively and specifically for on-site use in the construction of public works owned by or held in trust for the benefit of the United States or its agencies are exempt from tax so long as (a) the public work will be used exclusively for public purposes; (b) at the time of rental the U.S. Government holds a valid Form ST-2 from the Commissioner of Revenue; (c) a contractor's exempt purchase certificate (Form ST-5C) is presented at the time of rental; and (d) you as vendor keep the required records for each rental.

Sales to contractors of scaffolding and related equipment for use in the construction of public works owned by the United States or its agencies would be subject to tax.

Very truly yours,
/s/L. Joyce Hampers
L. Joyce Hampers
Commissioner of Revenue
LJH:JXD:mf
LR 81-44